

**FILED**

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SEMINOLE COAL RESOURCES, LLC,  
a Delaware Limited Liability Company,**

2016 AUG 26 AM 10:21

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**Plaintiff,**

**v.**

**Civil Action No. 16-C-1026**

**CSX TRANSPORTATION, INC., a Virginia  
Corporation and SPERRY RAIL, INC. a  
Delaware Corporation.**

**Defendants.**

**AMENDED COMPLAINT**

Plaintiff, Seminole Coal Resources, LLC, a Delaware Limited Liability Company, by counsel, files this Amended Complaint against Defendants CSX Transportation, Inc., a Virginia corporation, and Sperry Rail, Inc., a Delaware corporation, as follows:

**PARTIES AND JURISDICTION**

1. Seminole Coal Resources, LLC, ("Seminole") is a Delaware Limited Liability Company with its principal place of business outside of West Virginia.
2. Seminole acquired the rights of Maple Coal Company ("Maple") and Atlantic Leaseco ("Atlantic"), which are asserted herein.
3. Defendant CSX Transportation, Inc. ("CSXT") is a Virginia corporation with its principal place of business in Jacksonville, Florida. CSXT provides rail transportation services in West Virginia, including Kanawha County, West Virginia. CSXT is a wholly owned operating subsidiary of CSX, a New York Stock Exchange traded company.
4. Sperry Rail, Inc. ("Sperry") is a Delaware corporation, which is qualified to do and which does business in West Virginia. Sperry, by contract with CSXT, provides rail inspection and examination services, including in Kanawha County, West Virginia.

5. Venue and jurisdiction are proper because CSXT and Sperry at all relevant times conducted business in Kanawha County, West Virginia.

6. Subject matter jurisdiction is proper because Plaintiff claims arise exclusively under West Virginia state common, case and statutory law and result directly from CSXT's and Sperry's acts and failures to act which caused the derailment and resultant substantial property damage and economic harm and losses to Maple and Atlantic, each of which operated coal related businesses in West Virginia, but were required to cease operations due to the derailment. Plaintiff seeks no relief under any federal laws or regulations, assert no federal claims, and expressly disclaim any state law claim that is preempted by federal law.

#### **STATEMENT OF FACTS**

7. On February 16, 2015, a CSXT train with two engines and 109 rail tank cars filled with several hundred thousand gallons of highly flammable Bakken crude oil in transit from North Dakota to Yorktown, Virginia derailed in Mount Carbon, Fayette County, West Virginia.

8. CSXT directly, or by or through its corporate parent, CSX Corporation, owned, leased operated and/or controlled the rails where the derailment occurred.

9. Prior to the derailment, CSXT had hired and contracted with Sperry to conduct rail inspections, and where warranted by digital readings, or other information produced or made available during or after these inspections, to perform physical ground examinations and hand testing of CSXT's rails, including the rails at the derailment location at the time of the derailment.

10. One of the purposes of Sperry's work was to detect flaws in the rails and to advise CSXT thereof, or to make the information available to CSXT, so that those rails with flaws or defects could be further inspected, tested, monitored, repaired and/or replaced as necessary to

avoid derailments and the consequences thereof. CSXT and Sperry each understood at all times relevant, that Sperry's work , if negligently or defectively performed, could foreseeably result in derailment and catastrophic damage and loss to third persons, including Maple and Atlantic.

11. On or about December 17, 2014, Sperry conducted an inspection of the CSXT rails, including those at the point of derailment.

12. In the course of this inspection, the Sperry operator detected a condition or defect known as a "Vertical Split Head" ("VSH") in a rail located where the derailment would later occur. A VSH is a potentially dangerous condition that can lead to rail failure and derailment. The Sperry operator did not visually inspect, examine, test, nor recommend that anyone else visually, inspect, examine, or test this rail after detecting the VSH as required by company rule, applicable regulation, industry practice and reasonable prudence.

13. CSXT received, could have received or should have requested access to and actual or constructive notice and knowledge of the results of this Sperry rail inspection. CSXT had a duty to know the results of these important tests to undertake corrective measures and to avoid derailments and imminent danger to others, including Maple and Atlantic.

14. CSXT did not perform, require or direct its employees, Sperry, or anyone else to perform any visual examination, hand testing or any other diagnostic procedure to confirm and/or evaluate the nature and extent of the VSH, or to remove and replace the defective rail, as required by company rule, applicable regulation, industry practice and reasonable prudence.

15. On or about January 12, 2015, a Sperry operator conducted another inspection of the CSXT rails, including those at the point of derailment.

16. In the course of this inspection, the Sperry operator detected a more significant VSH at the same location as the previous Sperry operator detected a VSH in the inspection of December 17, 2014.

17. The Sperry operator failed to conduct any visual examination of the VSH location and rail, or hand tests to confirm the flaw, as required by company rule, applicable regulation, industry practice and reasonable prudence.

18. CSXT received, could have received or should have requested access to and actual or constructive notice and knowledge of the results of this Sperry rail inspection. CSXT had a duty to know the results of these important tests to avoid derailments and imminent danger to others, including Maple and Atlantic.

19. CSXT did not perform, require or direct its employees, Sperry, or anyone else to perform any visual examination, hand testing or any other diagnostic procedure to confirm the nature and extent of the VSH, or to remove and replace the defective rail, as required by company rule, applicable regulation, industry practice, or reasonable prudence.

20. Before the accident, it was well known, accepted and foreseeable by CSXT and Sperry that a VSH in a rail could cause a derailment and catastrophic loss and damages including to third parties such as Maple and Atlantic.

21. Sperry's work, as described herein, was inherently and intrinsically dangerous and so defective due to Sperry's negligence, that it caused an imminent danger to third persons, including Maple and Atlantic.

22. The Federal Railway Administration ("FRA") conducted an extensive investigation into the cause of the derailment.

23. On October 9, 2015, the FRA issued its report and findings regarding the cause of the derailment.

24. The FRA concluded, inter alia, that the derailment was preventable, but occurred as a direct result of the failure of CSXT and Sperry to train properly the operators; for the operator's and CSXT's failures to perform the required visual ground and hand inspections after knowledge of the VSHs through digital rail flaw test data obtained during the inspections, or to follow up on that data and replace the defective rails.

25. CSXT's and Sperry's conduct was willful, wanton and malicious and/or reckless and/or so grossly negligent as to entitle Plaintiff to an award of punitive damages. As a direct result of the derailment, 14 to 17 rail tank cars spilling hundreds of thousands of gallons of highly flammable, hazardous and toxic Bakken crude oil onto the ground and into the Kanawha River, resulting in explosions, fires, interruption of necessary utilities and services, including water and emergency services, and the closure of roads, which lasted for several days.

26. As a direct result of the derailment and spill and its aftermath, several businesses, including of Maple and Atlantic, suffered property damage and were without necessary access, services, including water and emergency services and were forced to close.

27. As a further result of the derailment and spill, Governor Tomblin declared a state of emergency.

28. As a direct and proximate result of the derailment and spill, the public highways and roads servicing Maple and Atlantic's locations were closed.

29. As a result of these mandatory road closures and other factors related to the derailment, Maple and Atlantic were forced to shut down their operations for several days. Each could not operate safely. Each lacked the necessary water and required access for ambulance,

emergency and fire personnel, which must be available to Maple's and Atlantic's location at all times they operate. The derailment and cessation of business also caused substantial property damage to Plaintiffs' structures, equipment and operations resulting in substantial economic loss and damages.

30. Within forty eight (48) hours after the derailment, CSXT knew that Maple and Atlantic had closed their businesses and operations temporarily due to the derailment and its aftermath. CSXT acknowledged to Maple and Atlantic's representatives CSXT's responsibility for the derailment and closure. CSXT began to process and to pay lost wage and benefit claims of Maple's and Atlantic's hourly employees as a result of their inability to work because of the derailment and closure. CSXT paid all of these lost wages and benefits, without any suggestion that they were not due, owing, or properly the responsibility of CSXT to pay as a result of the derailment. CSXT promised to quickly, efficiently, promptly and fairly compensate Maple and Atlantic fully for their losses and damages. CSXT directed Maple and Atlantic to work with Price Waterhouse Coopers ("PWC"), which was CSXT's accounting experts, agents and representatives working on the resolution of business property damage and interruption claims from the derailment.

31. CSXT made no mention of Sperry. Neither Maple, nor Atlantic, was then advised of any role Sperry had played in the negligent and defective rail inspections as set forth herein.

32. As a direct result of the derailment, and in spite of the closure, Maple and Atlantic continued to incur and could not avoid incurring on-going costs and expenses, without the ability to generate any revenue. Many of Maple's and Atlantic's salaried employees were required to continue working, but not on their customary tasks. Instead, they did hourly operations related work and attempted to avoid mitigate and prevent further property damage from freezing water,

pipes and equipment. They were not successful in preventing additional property damage from the derailment and resultant closure. Plaintiff was also unable to fill an order for coal at an above market price, which Maple and Atlantic then had available for shipment, but could not ship due to the derailment and closure. When Maple and Atlantic were able and permitted to re-open their operations and business, the order was no longer available. Maple and Atlantic lost and could not replace that or other losses from not operating.

33. Beginning in February 2015, and for months after the derailment, CSXT, through its authorized consultant and representative, PWC and senior managers of Maple and Atlantic exchanged information and documents so that CSXT could pay Maple's and Atlantic's losses and damages from the derailment, which CSXT acknowledged it owed and had a responsibility to pay.

34. Notwithstanding Maple and Atlantic supplying to CSXT, through PWC, all the information and documents PWC requested of Maple and Atlantic regarding their cost, expenses, losses and damages from the derailment and the acknowledgement of PWC that Maple and Atlantic had suffered and incurred the losses submitted, as well as additional business interruption losses not submitted and confirmation that PWC needed no further information or documents for CSXT to pay Maple and Atlantic their damages and losses, CSXT failed and refused to pay Maple and Atlantic their damages and losses. Instead, CSXT offered Maple and Atlantic less than Fifty Cents (\$.50) on the dollar as payment for these losses and damages.

#### **COUNT I - NEGLIGENCE**

35. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

36. At all relevant times, CSXT had a duty to exercise reasonable care in the operation,

inspection, monitoring, maintenance, repair and replacement of the rails and cars used to transport highly flammable, toxic Bakken crude oil and Sperry had a duty to exercise reasonable care in the inspection and monitoring of these rails and the training of its personnel to perform proper inspections and all necessary work to avoid rail failure and catastrophic loss.

37. CSXT and Sperry knew or in the exercise of reasonable care should have known, among other things, that the breach of these and related duties and the failure properly to operate, inspect, monitor, maintain, repair or replace the rails, which failed and caused the derailment, or the rail cars, could cause a derailment and catastrophic damage to residents and businesses in proximity to the rails.

38. CSXT and Sperry failed to take reasonable measures and to exercise due care to meet these obligations or to train adequately their personnel to perform their respective duties, or to have or to enforce adequate rules, policies or procedures for the performance of these duties to prevent the foreseeable and unreasonable risks of harm and actual harm and damage from a derailment. Maple and Atlantic suffered property loss, injury, damage and economic loss as a direct and proximate result of the derailment and CSXT and Sperry's breach of these duties of care and negligence.

39. Each Defendant had a duty to warn Maple and Atlantic and others that each Defendant had failed to meet its duties, which arise from common law, statutory rules, codes, and regulations, industry custom and practice and reasonable prudence. Each Defendant breached this duty. The breach was willful, wanton, reckless and/or grossly negligent, in conscious disregard of the potential for harm to others, which in fact occurred. Maple and Atlantic suffered damages proximately by each Defendant's breach of duties. Maple and Atlantic were foreseeable victims of these acts, breaches and omissions and sustained



foreseeable damages from the acts and omissions of each Defendant.

### **COUNT II – PRIVATE NUISANCE**

40. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

41. Maple and Atlantic are entitled to the reasonable use and enjoyment of their property without interference, annoyance and/or disturbance of its ordinary use.

42. Defendants' acts and failures to act as alleged, proximately caused or contributed to the derailment and its aftermath, which improperly interfered with Maple's and Atlantic's operation of their lawful businesses and caused damage to them for which each Defendant is liable.

### **COUNT III- ESTOPPEL-CSXT**

43. Plaintiff repeats and realleges all the prior paragraphs of the Complaint as if fully set forth herein.

44. Immediately after the catastrophic derailment, Maple and Atlantic representatives contacted CSXT to advise of the closure of Maple's and Atlantic's businesses and operations due to the derailment, road closures and associated factors.

45. In reliance on CSXT's representations and actions including, in February, 2015, CSXT paid Maple's and Atlantic's hourly employees their lost wages and Maple and Atlantic began communications with and supplied information to PWC, as directed by CSXT. This process continued for several months. Finally, after multiple joint telephone conferences and written submissions, complete with spreadsheets and supporting data, PWC confirmed it had all the information it had requested and needed from Maple and Atlantic; understood their damage claims and the basis therefor; and that PWC would recommend that CSXT pay these amounts promptly to resolve, pay and settle their claims.

46. From inception of this process, Maple and Atlantic made it clear to PWC and CSXT that Maple and Atlantic were not then seeking to recover every dollar lost, nor looking to negotiate their damage claims, provided the payment of their damages was prompt and fair. Maple and Atlantic were simply looking to be compensated quickly for the majority of their demonstrated losses and damages from the derailment. PWC and CSXT acknowledged, encouraged and agreed to this approach and CSXT said it sought a prompt, full and fair resolution of the claims.

47. Contrary to PWC's and CSXT's representations to Maple and Atlantic, CSXT failed and refused to perform as represented and has failed and refused to offer to pay Maple and Atlantic even half of their demonstrated losses from the derailment.

48. As a direct and proximate result thereof, CSXT is estopped to deny its liability to Plaintiff and responsibility to pay Plaintiff all property damages and losses suffered by Maple and Atlantic, together with pre-judgment and post judgment interest, attorney's fees costs and expenses as determined by the jury or court.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for a jury trial and judgment against Defendants as follows:

1) Compensatory damages, punitive damages, reasonable attorneys' fees, filing fees, and other reasonable costs and expenses of this action; 2) Prejudgment and post-judgment interest; and 3 ) Any other and further relief as this Court deems just and proper

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